Stoneham Laundry, Inc., Brooks, Inc. d/b/a Rutters Linen Service *and* New England Regional Joint Board, Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC. Case 1-CA-18276

July 10, 1981

DECISION AND ORDER

Upon a charge filed on January 30, 1981, by New England Regional Joint Board, Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, herein called the Union, and duly served on Stoneham Laundry, Inc., Brooks, Inc. d/b/a Rutters Linen Service, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 1, issued a complaint and notice of hearing on February 26, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on December 1, 1980, following a Board election in Case 1-RC-16898, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;[1] and that, commencing on or about January 20, 1981,[2] and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so, and commencing on or about January 20, 1981, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union by refusing to provide information requested by the Union. Thereafter, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On March 30, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on April 13, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint, Respondent admits its refusal to recognize and bargain with the Union. However, it challenges the Union's certification based on its objections to the election in the underlying representation proceeding.

Review of the record herein, including the record in Case 1-RC-16898, reveals that an election conducted pursuant to a Stipulation for Certification Upon Consent Election on July 11, 1980, resulted in a vote of 51 for, and 41 against, the Union, with 6 challenged ballots and 2 void ballots. Thereafter, Respondent filed timely objections to the election alleging, in substance, that the Union made substantial and material misrepresentations concerning the vacation benefits which employees receive under union contracts and the size of a wage increase negotiated by the Union for certain employees at the facility of another employer.

After investigation, the Regional Director issued his Report on Objections in which he recommended that Respondent's objections be overruled in their entirety and that a Certification of Representative be issued. Thereafter, Respondent filed exceptions to the Regional Director's report. On December 1, 1980, the Board, having considered the Regional Director's report, the Employer's exceptions thereto, and the entire record, adopted the findings and recommendations of the Regional Director and certified the Union as the exclusive bargaining agent of the employees in the unit stipulated to be appropriate. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.[3]

[1] Official notice is taken of the record in the representation proceeding, Case 1-RC-16898, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enfd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enfd. 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enfd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

[2] The complaint alleges, and Respondent admits, that Respondent's refusal to bargain occurred on December 20, 1980. However, in his Motion for Summary Judgment the General Counsel points out that the correct date of the refusal to bargain was January 20, 1981. We note that Respondent, in its response to the Notice To Show Cause, does not dispute the correctness of the January 20, 1981, date.

[3] See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding.

In this proceeding Respondent contends, in effect, that it is entitled to a hearing on its objections to the election. Prior to adopting the findings and recommendations of the Regional Director's Report on Objections, the Board considered the report, Respondent's exceptions thereto, and the entire record in this case. In adopting the report recommending that Respondent's objections be overruled, the Board expressly found that Respondent's request for a hearing was without merit. It is well established that the parties do not have an absolute right to a hearing on objections to an election. It is only when the moving party presents a *prima facie* showing of "substantial and material issues" which would warrant setting aside the election that it is entitled to an evidentiary hearing. It is clear that, absent arbitrary action, this qualified right to a hearing satisfies the constitutional requirements of due process.[4] Accordingly, we find that Respondent at all material times herein has refused to recognize and bargain with the Union, and that it thereby has violated Section 8(a)(5) and (1) of the Act.

In its answer to the complaint, Respondent admits that it has refused to furnish the Union with the requested information, but defends its refusal to furnish such information on the grounds that the Union's certification is improper. For the above-stated reasons, we find such a defense without merit. By letter dated December 19, 1980, the Union requested that Respondent furnish it with information concerning the employees' rates of pay, benefits, seniority dates, work rules, and related information.[5]

It is well established that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon request.[6] Furthermore, Respondent has not attempted to rebut the relevance of the information requested by the Union. Accordingly, we find that no material issues of fact exist with regard to Respondent's refusal to furnish the information sought by the Union in its letter of December 19, 1980, and that its refusal to do so violated Section 8(a)(5) and (1) of the Act. Therefore, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Stoneham Laundry, Inc., a Massachusetts corporation, maintains its principal office and place of business at 45 Brook Street Rear, Lawrence, Massachusetts, where it is engaged in the business of providing commercial (nonretail) laundering services. Brooks, Inc. d/b/a Rutters Linen Service, a Massachusetts corporation, maintains its principal office and place of business at 45 Brook Street Rear, Lawrence, Massachusetts, where it is engaged in the business of providing commercial (nonretail) laundering services. At all times material herein, Stoneham Laundry, Inc., and Brooks, Inc. d/b/a Rutters Linen Service, have been affiliated business enterprises and have constituted a single integrated business enterprise and a single employer.

Respondent, in the course and conduct of its business, causes and continuously has caused at all material times herein, large quantities of goods and materials used by it in the providing of laundering services to be purchased and transported in interstate commerce from and through various States of the United States other than the Commonwealth of Massachusettes. Respondent annually receives at its 45 Brook Street Rear, Lawrence, Massachusetts, location goods and materials valued in excess of $50,000 directly from sources located outside the Commonwealth of Massachusetts.

We find, based on the foregoing, that Stoneham Laundry, Inc., and Brooks, Inc. d/b/a Rutters Linen Service, are, and have been at all material times herein, a single integrated business enterprise and single employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

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[4] *GTE Lenkurt, Incorporated*, 218 NLRB 929 (1975); *Heavenly Valley Ski Area, a California Corporation, and Heavenly Valley, a Partnership*, 215 NLRB 734 (1974); *Amalgamated Clothing Workers of America [Winfield Manufacturing Company, Inc.]* v. *N.L.R.B.*, 424 F.2d 818 (D.C. Cir. 1970).

[5] More specifically, the Union requested the name, date of birth, classification, and wage rate of each unit employee; each unit employee's date of hire, last increase, and any transfer; a weekly list of new hires and copies of all employee benefit programs; job evaluation systems, production standard systems, and employee plant rules; the yearly earnings, overtime pay, vacation pay, and holiday pay for each employee; and the cost of each fringe benefit and whether the employee or the Employer or both pay the cost.

[6] *Verona Dyestuff Division Mobay Chemical Corporation*, 233 NLRB 109, 110 (1977).

II. THE LABOR ORGANIZATION INVOLVED

New England Regional Joint Board, Amalgamated Clothing & Textile Workers Union, AFL–CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All regular full-time and regular part-time production and maintenance employees including plant clerical employees employed by the Employer at its Lawrence, Massachusetts, facility, but excluding all office clerical employees, truck drivers, guards and supervisors as defined in the Act.

2. The certification

On July 11, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 1, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on December 1, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about December 19, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about January 20, 1981, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since January 20, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

C. *The Request for Information and Respondent's Refusal To Furnish It*

Commencing on or about December 19, 1980, and at all times thereafter, the Union has requested Respondent to provide it with information concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information. Commencing on or about January 20, 1981, Respondent has refused, and continues to refuse, to provide the Union with the requested information.

Accordingly, we find that Respondent has refused to furnish the Union with information relating to employment conditions and wages of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement. We shall also order that Respondent, upon request, furnish the Union with the information it requested by letter dated December 19, 1980.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817;

Burnett Construction Company, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Stoneham Laundry, Inc., Brooks, Inc. d/b/a Rutters Linen Service, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. New England Regional Joint Board, Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular full-time and regular part-time production and maintenance employees, including plant clerical employees, employed by Respondent at its Lawrence, Massachusetts, facility, but excluding all office clerical employees, truckdrivers, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since December 1, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about January 20, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about January 20, 1981, and at all times thereafter, to furnish the Union with information concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information as requested by the Union in its letter of December 19, 1980, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Stoneham Laundry, Inc., Brooks, Inc. d/b/a Rutters Linen Service, Lawrence, Massachusetts, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with New England Regional Joint Board, Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All regular full-time and regular part-time production and maintenace employees including plant clerical employees employed by the Employer at its Lawrence, Massachusetts, facility, but excluding all office clerical employees, truck drivers, guards and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish said labor organization with the information requested in its letter of December 19, 1980, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with the information requested in its letter of December 19, 1980, concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

(c) Post at its Lawrence, Massachusetts, facility copies of the attached notice marked "Appendix."[7]

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with New England Regional Joint Board, Amalgamated Clothing & Textile Workers Union, AFL-CIO, CLC, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named Union by refusing to furnish said Union the information requested in its letter of December 19, 1980, concerning theunit employees' rates of pay, benefits, seniority dates, work rules, and related information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All regular full-time and regular part-time production and maintenance employees including plant clerical employees employed by the Employer at its Lawrence, Massachusetts, facility, but excluding all office clerical employees, truck drivers, guards and supervisors as defined in the Act.

WE WILL, upon request, bargain collectively with the above-named Union by furnishing it the information it requested concerning the unit employees' rates of pay, benefits, seniority dates, work rules, and related information.

STONEHAM LAUNDRY, INC., BROOKS, INC. D/B/A RUTTERS LINEN SERVICE